IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

J U D G M E N T

STATE OF RAJ. VS. KASHMIR SINGH & ORS.

D.B. CRIMINAL APPEAL NO.170/1985

"UNDER SECTION 378 [iii] & [i] CR.P.C. AGAINST THE JUDGMENT DATED 28.11.84 PASSED BY SRI RANVEER SINGH VERMA, SESSIONS JUDGE, SRI GANGANAGAR IN SESSIONS CASE NO.34/84."

DATE OF JUDGMENT ::::: 17TH SEPTEMBER, 2007.

P R E S E N T

HON'BLE MR. JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.J.P.S.Choudhary, P.P.
Mr. Doongar Singh for the respondents.

BY THE COURT : [PER HON'BLE MR. BHANDARI,J.]

State has preferred this appeal against the judgment dated 28.11.84 passed by the District and Sessions Judge, Sri Ganganagar in Sessions Case No.34/84.

The prosecution case was started by lodging First Information Report by one Mallu Ram S/o Prema Ram with Police Station Chunavad at about 6.30 A.M. on 19.03.83. Complainant Mallu Ram

made an oral report to the effect that his nephew Krishna Chand lodged a case against Surjeet Singh only twenty days back in regard to gun-fire. Surjeet Singh and Kashmir Singh was keeping enmity with them. Thus on the fateful night of the occurrence when Ramrakh visited his younger brother Om Prakash house and stayed there, they heard a noise of fire in Mani Ram's house and further heard cries of females then immediately complainant Mallu Ram reached to Mani Ram's place there it was found that Kashmir Singh, Geja Singh, Surjeet Singh and Ranjeet Singh came out from Mani Ram's house and ran towards their own houses. When he visited Mani Ram's place then saw that dead body of Mani Ram was lying on the floor which was in the pool of blood. Mani Ram's wife informed that she along with Sukhi Devi and Vimla were sleeping there and near Kitchen Mani Ram was also sleeping in the outer space of the house. She heard certain noises hence all the three woke up and when she opened the door then in the bulb light saw Kashmir Singh, Geja Singh armed with lathi, Surjeet Singh with a pistol and Ranjeet Singh with gandasi. All the four accused were fighting with Mani Ram. When she tried to save Mani Ram then Surjeet Singh accused fired the pistol in the chest of Mani Ram, as a result of which he fell down on the floor. She, Sukh Devi and Vimla had also tried to save Mani Ram but they also sustained injuries by accused persons. Mani Ram's wife then informed that her ornaments were taken out by accused Geja Singh and Ranjeet

Singh who then ran away from the place of occurrence.

The police registered First Information Report being No.22/83 under Sections 302, 458, 450 and 394 of IPC and further registered a case under Section 27 of the Indian Arms Act. Police conducted usual investigation and thereafter filed challan before Chief Judicial Magistrate, Class I, Sri Ganganagar. Chief Judicial Magistrate thereafter committed the case to the trial court under Sections 302, 394, 397 IPC. The trial court vide its order dated 28.04.85 framed charges against accused Surjeet Singh under Section 458, 450, 394 and 302 IPC along with Section 27 of the Indian Arms Act. Against the accused Kashmir Singh, and against Geja Singh and Ranjeet Singh charges were framed under Section 458/450, 397 and 302/34 IPC. All the accused denied charges and claimed trial.

At the trial, prosecution examined as many as nine witnesses and exhibited 16 documents whereas in defence statement of one witness Pal Singh was recorded whereas 10 documents were produced. The learned trial court thereafter acquitted three accused vide impugned judgment.

Learned Public Prosecutor appearing for the State urged that the trial court failed to place reliance on the statement of P.W.2 Shivkori whose presence cannot be doubted. However, trial court

had not believed her testimony entirely rather taking note of delay in filing of First Information Report and non-existence of motive coupled with the fact that there was only one main witness to support prosecution case namely Shivkori, the finding was recorded in favour of accused. The trial court has erroneously recorded its finding regarding contradiction in the statement of Shivkori. It was thus prayed that the judgment of trial court is based on perverse finding thus, deserves to be set aside.

Per contra, learned counsel appearing for the accused respondent submitted that delay in filing of First Information Report was found to be fatal as delay remained unexplained. It was further submitted that prosecution could not establish motive of the accused to kill Mani Ram though it was also submitted that motive may not be necessary to prove prosecution case but in absence of motive prosecution case was required to be seen minutely. According to the learned counsel, the trial court has minutely examined the statement of eye witness P.W.2 Shivkori and finding the contradiction, the case against the accused was not found to be made out and accordingly judgment was given in their favour. Learned counsel thus prayed that there exists no perversity in the judgment hence the appeal preferred by the State deserve to be dismissed.

We have carefully examined the record and submissions made by learned Public Prosecutor as well as learned counsel for the respondents.

The prosecution case, as set out is that deceased Mani Ram was residing with his wife Shiv Kori, son Jaswant and daughter Bhagvanti in village Chhoti. Accused Kashmir Singh and Geja Singh are real brothers whereas Ranjeet Singh is Kashmir Singh's son and Surjeet Singh is the son of Gurmej Singh who is the brother of Kashmir Singh. All the four accused were living in the house attached to Mani Ram's house. As per prosecution, on 28.02.83 and on 01.03.83 Surjeet Singh and Geja Singh fought with each other, therefore, the matter was reported by Krishna Chand to Mallu Ram. Mallu Rama and Krishna Chand had thereafter reported the matter to the police. Consequently, a case was initiated against Kashmir Singh and Surjeet Singh. According to the prosecution, deceased Mani Ram, Krishna Chand and Mallu Ram were pursuing the matter and, therefore accused got annoyed with Mani Ram. Apart from this, almost five years back deceased Mani Ram purchased a land measuring 15 Bhigas from Balram Jakhad which otherwise intend to be purchased by the accused. Taking note of these incidents motive of accused was projected.

On 18th and 19th March 1983 Mani Ram was sleeping near the

Kitchen and Shivkori, daughter Bhagvanti, son Jaswant, Sukhdevi and Vimla were sleeping in “Kotha”. Shivkori woke up after hearing noise of foot steps and when she had seen out side from a whole in the wall then saw that all the four accused were standing there. Kahsmir Singh was armed with stick whereas Geja Singh was armed with lathi, Ranjeet Singh was armed with gandasi and Surjeet Singh was armed with a pistol. After seeing them, Shivkori came out followed by Sukhdevi and Vimla, there in the presence of bulb light they saw that Mani Ram was surrounded by all the four accused and they all were beating Mani Ram. At that time Surjeet Singh fired Mani Ram by a pistol, as a result of which he fell down. Shivkori came to save him but Ranjeet Singh accused gave a blow to her by a gandasi, Sukhdevi and Vimla also came there to save them but they also received injuries by lathi and gandasi. After that Geja Singh and Ranjeet Singh came inside, and Geja Singh had taken out Shivkori's earrings by cutting her ear and thereafter Ranjeet Singh opened earrings of Sukhdevi and Vimla and thereafter all the accused ran away.

The prosecution story as stated is mainly supported by two witnesses they are P.W.2 Shivkori and P.W.3 Mallu Ram. Thus, prosecution case mainly rest on these two witnesses, however, out of these two witnesses Mallu Ram is not an eye-witness of the occurrence. Sukhdevi and Vimla were not examined by the

prosecution. Thus, the statement of witness Shivkori becomes material but before discussing these two statements it is necessary to see as to whether there was a delay in filing of First Information Report and further as to whether prosecution could prove motive of accused to commit crime of murder.

So far as issue No.1 regarding filing of the First Information Report is concerned, it is a fact that incident took place in the midnight at about 1.00 A.M. and the First Information Report was lodged at 6.30 A.M. in the morning which according to the trial court was found to be a delayed report and no proper explanation could be given by the prosecution for the said delay. More so, during the intervening period there was sufficient time to make out a story to implicate the accused in the matter. On perusal of the findings of the learned trial court we find that the incident took place at the midnight of 18th and 19th March, 1983. As per the First Information Report the occurrence had taken place at about 1.00 A.M. in the night. Witness Mallu Ram has given explanation regarding delay in filing of First Information Report by stating that First Information Report was not lodged immediately due to fear, however, the said statement of witness Mallu Ram cannot be accepted because as per his own statement Om Prakash and Bhagirath were living in the same village residing close to the deceased house came there and at the same time Ramrakh had also stayed there in the village. Apart from them,

even deceased son Jaswant Singh was present at the time of occurrence and that Kanaram, Bhagirath Pandit and Kalu Singh came at the scene of occurrence immediately after some time therefore, it cannot be said that even after the presence of so many persons one can have fear to lodge the First Information Report. The second explanation given by Mulla Ram was that no vehicle was available to cover the distance of police station. In cross examination, it was admitted that cycles were available but for the reason of heavy rain it was not possible to visit the police station. The fact regarding heavy rain was not corroborated by any other witness rather as per the statement of Investigating Officer Bhajan Singh, it was only drizzling and not a heavy rain at that time. It was further submitted that Mulla Ram visited police station on a tractor of Bhagirath Pandit who reached on the scene of occurrence at 3.00 P.M. Itself thus even though a vehicle was available, why complainant had not visited police station immediately is not being explained. Thus, it can safely be recorded that First Information Report was not lodged spontaneously. Delay in filing First Information Report may become material because during the intervening period witnesses and other villagers may have made out a story. However, the prosecution case cannot be demolished, conclusively on this ground alone.

The second issue is as to whether the accused were having

any motive to commit a crime of murder. In that regard prosecution had submitted that as per the statement of P.W.2 Shivkori her husband deceased Mani Ram purchased a land measuring 15 Bhigas from one Balram Jakhad. According to her, accused had an agreement with Balram Jakhad for purchase of said land but deceased Mani Ram purchased that land by paying higher amount to Balram Jakhad. Thus accused were having enmity with Mani Ram however, the said witness in her cross examination admitted that the incident of purchase of land is about five years old and during the intervening period accused had never fought with deceased in regard to said land. Thus, it was not found to be established that on account of purchase of land, accused could have committed crime. Witness Shivkori further stated second reason of enmity that almost 20 days before the incidence accused fought with Kishan Chand and there deceased Mani Ram had favoured Kishan Chand. However, to this effect no evidence is produced on the record as to how Mani Ram favoured Kishan Chand. Though witness Mallu Ram P.W.3 tried to state that in the matter of Kishan Chand, Mani Ram had favoured Kishan Chand but again nothing was stated as to how Mani Ram favoured Kishan Chand. It has also come on record that the said matter was not reported by Mani Ram but was reported by Mallu Ram alongwith others where Mani Ram's presence was not even shown hence it becomes clear that even second ground to prove motive could not be established, therefore, even motive could

not be established by the prosecution against the accused to commit the crime, thus it becomes necessary to minutely examine the prosecution case as to whether they could prove their case.

As we have already recorded our finding that the statement of only P.W.2 Shivkori is material because she is the only eye-witness of the occurrence produced by the prosecution inasmuch as Sukhdevi and Vimla were not produced by the prosecution to prove their case despite of their presence at the time of occurrence.

The learned trial court first considered material fact as to whether it was possible to identify the accused in the night and for that purpose, presence of bulb become material. P.W. 2 Shivkori in her statement stated that though it was a dark night but in the presence of bulb light she had seen accused beating her husband. In her cross examination witness Shivkori admitted that if bulb light would not have been there, it was not possible to identify accused. Shivkori has stated that a bulb was present in the open floor area and in “BHAKAL”. The said statement of Shivkori has not been corroborated by Bhajan Singh who had made a report on Ex.P-1 to the effect that no bulb exist at point number 6 and 7 of accused house rather there exist no electric point to place a bulb on those places. Presence of one bulb holder was shown on the gate of the house but said holder was not having a bulb and even on the gate

there existed only a bulb holder. In the cross examination of witness Bhajan Singh. Investigating officer, admitted that though the presence of holder was seen by him during the course of investigation but inside the house neither a holder nor a bulb was found. One bulb was found on the western side of the gate. However, its light was not going out but was giving illumination on the inner area. This statement is not corroborated by Ex.P-1 because at the place stated no holder or bulb is shown. Even P.W.3 Mallu Ram has not stated that there existed any bulb inside the floor area of the house. Thus there exist contradiction in the evidence regarding presence and place of bulb to give light. If the statement and cross examination of these witnesses are carefully perused then it becomes clear that presence of bulb is not shown at the place of occurrence from where witness Shivkori has said to have seen the incident. Thus, in these circumstances, the findings recorded by the learned trial court that there exists contradiction in the evidence of the prosecution to establish availability of the light at the place of occurrence and recording its finding against the prosecution cannot be said to be perverse.

So far as fact regarding involvement of two accused to take away ear rings of Shivkori, Sukhdevi and Vimla is concerned, we find that injury report of Shivkori does not corroborate the fact that ear rings of Shivkori was snatched causing a cut on the ear. P.w.1

Dr.Inderjeet Poonia stated that injuries no.1 and 2 cannot be sustained due to snatching of ear rings. According to him the injury on those parts were caused by a sharp weapon. Though the argument was given that the statement of P.W.1 Dr.Inderjeet Poonia should not be trusted but we find that in cross examination Dr.Poonia was not asked any question to show that his statement is wrong, therefore, in absence of any question being raised to Dr.Poonia his opinion cannot be disbelieved. Sukhdevi and Vimla were not examined by the prosecution thus the prosecution case could not prove even this part of their story against the accused persons.

We find contradiction in the court statement and in the police statement of P.W.2 Shivkori on important issues. Though it was tried to be projected that police must not have recorded her statement correctly. Shivkori's police statement were recorded vide Ex.P-2 on 19.03.83 and there exists no evidence on record to show that either her statement was not rightly recorded or she was threatened to make statement in a particular manner though witness Mallu Ram P.W.3 tried to make allegation against the investigating agency but in cross examination he had literally given up the said statement. Even Shivkori in her cross examination admitted that police had recorded her statement in the presence of Mallu Ram P.W.3 and no allegation has been made against the police to the effect that those statements were not rightly recorded. Those

contradictions are even regarding the story of scene of occurrence. Witness Shivkori stated that when she came out from the “kotha” then she saw that the accused were beating Mani Ram and thereafter Surjeet Singh fired Mani Ram by a pistol but in cross examination she stated that when she woke up and opened the door of “Kotha” then she saw that Mani Ram was lying on the floor. Sameway she further stated that Kashmir Singh was having Bali, Geja Singh a lathi, Ranjeet Singh a gandasi and Surjeet Singh a pistol but in statement she had not specified the weapon of the four accused, what was stated is that Kashmir Singh, Geja Singh, Surjeet Singh and Ranjeet Singh found standing in the floor area out of which one was holding a gandasi, two were holding lathis and one was holding a gun. A further contradiction is regarding injury. On one side she has stated that she is not in know of the fact as to who caused injury to her when she came from “Kotha” but at the other place she specified that Ranjeet Singh accused caused injury by gandasi. Her statement regarding snatching of earrings was also not been corroborated by the medical evidence. Thus such contradiction being of material nature, the statement of witness becomes doubtful thus becomes unsafe to rely.

We further find contradiction in the statement of P.W. 3 Mallu Ram whose court statement was different than what was stated while lodging the First information Report hence for all these reasons

even if we ignore the delay in lodging First Information Report and absence of motive to commit the crime then also prosecution could not prove its case against the accused beyond doubt.

Even on examination of the judgment of the trial court we find no perversity in it so as to call for our interference at the appellate stage. Rather we find that learned trial court has minutely examined each and every aspect of the matter before arriving at the conclusion. Thus in these circumstances, we are not in agreement with the arguments raised by learned Public Prosecutor.

As a result, the appeal filed by the State having no substance is accordingly dismissed. The judgment passed by the learned trial court is accordingly affirmed.

[MUNISHWAR NATH BHANDARI],J. **[BHAGWATI PRASAD],J.**

MAMTA